



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB5518

by Rep. John A. Fritchey

#### SYNOPSIS AS INTRODUCED:

765 ILCS 1075/5  
765 ILCS 1075/10  
765 ILCS 1075/15  
765 ILCS 1075/35

Amends the Right to Publicity Act. Provides that "individual" means a living or deceased person regardless of whether the law of the person's domicile, residence, or citizenship at the time of death or otherwise recognizes a similar property right. Provides that the Act applies to all personalities, living or deceased, regardless of domicile or the domicile at the time of death. Provides that the rights under the Act are deemed to have existed at the time of transfer of an interest, death of the person, or death of any subsequent successor of the person's rights for the purpose of determining who is entitled to the property rights. Provides that the Act applies to acts or events that have a substantial relationship to Illinois and take place after the effective date of this Act (instead of take place after the effective date of this Act). Adds a sixth category of exceptions to the applicability of the Act that provides that the Act does not apply to the use of an individual's identity by a person that licenses or engages in any type of intellectual property transaction or the rights to use photographs, videotapes, recordings, or other materials; however, the exception does not apply when a person expressly authorizes the use of publicity rights without a required written consent. Effective immediately.

LRB095 16811 AJ0 45908 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Right of Publicity Act is amended by  
5 changing Sections 5, 10, 15, and 35 as follows:

6 (765 ILCS 1075/5)

7 Sec. 5. Definitions. As used in this Act:

8 "Commercial purpose" means the public use or holding out of  
9 an individual's identity (i) on or in connection with the  
10 offering for sale or sale of a product, merchandise, goods, or  
11 services; (ii) for purposes of advertising or promoting  
12 products, merchandise, goods, or services; or (iii) for the  
13 purpose of fundraising.

14 "Identity" means any attribute of an individual that serves  
15 to identify that individual to an ordinary, reasonable viewer  
16 or listener, including but not limited to (i) name, (ii)  
17 signature, (iii) photograph, (iv) image, (v) likeness, or (vi)  
18 voice.

19 "Individual" means a living or deceased natural person,  
20 regardless of whether (i) the identity of that individual has  
21 been used for a commercial purpose during the individual's  
22 lifetime or (ii) the law of the domicile, residence, or  
23 citizenship of the person at the time of death or otherwise

1 recognizes a similar or identical property right.

2 "Juristic person" means a partnership, trust, estate,  
3 corporation, unincorporated association, or other organization  
4 capable of suing and being sued in a court of law.

5 "Name" means the actual name or other name by which an  
6 individual is known that is intended to identify that  
7 individual.

8 "Person" means a natural or juristic person.

9 "Work of Fine Art" means (i) a visual rendition including,  
10 but not limited to, a painting, drawing, sculpture, mosaic,  
11 videotape, or photograph; (ii) a work of calligraphy; (iii) a  
12 work of graphic art including, but not limited to, an etching,  
13 lithograph, serigraph, or offset print; (iv) a craft work in  
14 materials including, but not limited to, clay, textile, fiber,  
15 wood, metal, plastic, or glass; or (v) a work in mixed media  
16 including, but not limited to, a collage, assemblage, or work  
17 consisting of any combination of items (i) through (iv).

18 (Source: P.A. 90-747, eff. 1-1-99.)

19 (765 ILCS 1075/10)

20 Sec. 10. Recognition of right of publicity. The right to  
21 control and to choose whether and how to use an individual's  
22 identity for commercial purposes is recognized as each  
23 individual's right of publicity. This Act is intended to apply  
24 to all personalities, living or deceased, regardless of  
25 domicile or place of domicile at time of death.

1 (Source: P.A. 90-747, eff. 1-1-99.)

2 (765 ILCS 1075/15)

3 Sec. 15. Transferability, descendability, and  
4 divisibility. The rights under this Act are property rights  
5 that are freely transferable in whole or in part to any person  
6 either by written transfer, including but not limited to wills  
7 and trusts, or by intestate succession only to an individual's  
8 spouse, parents, children, and grandchildren, except that the  
9 rights under this Act are not subject to levy or attachment and  
10 may not be the subject of a security interest. Nothing in this  
11 Section limits the ability of any party to levy, attach, or  
12 obtain a security interest in the proceeds of the rights under  
13 this Act or the proceeds of the exercise of those rights. The  
14 rights under this Act shall be deemed to have existed at the  
15 time of a transfer or at the time of the death of any deceased  
16 person or subsequent successor of his or her rights for the  
17 purpose of determining the person or persons entitled to these  
18 property rights as provided in this Section.

19 (Source: P.A. 90-747, eff. 1-1-99.)

20 (765 ILCS 1075/35)

21 Sec. 35. Applicability.

22 (a) This Act applies to acts or events that have a  
23 substantial relationship to Illinois and take place after the  
24 effective date of this Act.

1 (b) This Act does not apply to the following:

2 (1) use of an individual's identity in an attempt to  
3 portray, describe, or impersonate that individual in a live  
4 performance, a single and original work of fine art, play,  
5 book, article, musical work, film, radio, television, or  
6 other audio, visual, or audio-visual work, provided that  
7 the performance, work, play, book, article, or film does  
8 not constitute in and of itself a commercial advertisement  
9 for a product, merchandise, goods, or services;

10 (2) use of an individual's identity for non-commercial  
11 purposes, including any news, public affairs, or sports  
12 broadcast or account, or any political campaign;

13 (3) use of an individual's name in truthfully  
14 identifying the person as the author of a particular work  
15 or program or the performer in a particular performance;

16 (4) promotional materials, advertisements, or  
17 commercial announcements for a use described under  
18 paragraph (1), (2), or (3) of this subsection; ~~or~~

19 (5) use of photographs, videotapes, and images by a  
20 person, firm, or corporation practicing the profession of  
21 photography ("professional photographer") to exhibit in or  
22 about the professional photographer's place of business or  
23 portfolio, specimens of the professional photographer's  
24 work, unless the exhibition is continued by the  
25 professional photographer after written notice objecting  
26 to the exhibition has been given by the individual

1           portrayed; ~~or-~~

2           (6) use of an individual's identity by a person or  
3           entity engaged in the business of licensing or transacting  
4           of (i) intellectual property rights of any kind (including  
5           without limitation copyrights) or (ii) rights to use  
6           photographs, videotapes, sound recordings, and any other  
7           materials, in any form; provided, however, this exception  
8           does not apply when the person or entity expressly  
9           authorizes the use of publicity rights governed by this Act  
10           for a commercial purpose without the written consent  
11           required by this Act.

12           (Source: P.A. 90-747, eff. 1-1-99.)

13           Section 99. Effective date. This Act takes effect upon  
14           becoming law.